have become entitled to it. However, it is abundantly clear that severance pay is entirely in the discretion of the employer and that no employee is entitled to it as of right. The plaintiff's claim for severance pay is therefore disallowed.

In the result I hold that there was due to the plaintiff on the date of his dismissal a sum of $2,674.47 by way of commission and leave pay and that he is entitled to a sum of $1,175 being two months' salary and Provident Fund contribution as damages for wrongful dismissal. There will therefore be judgment for the plaintiff in the sum of $3,849.47 and taxed costs.

Judgment for the plaintiff.

Solicitors: *R. R. Chelliah Bros.; Shearn, Delamore & Co.*

CHAN BUCK KIA v. NAGA SHIPPING & TRADING CO. LTD.

[O.C.J. (Tan Ah Tah J.) February 15, 1963]

[Singapore — Suit No. 1647 of 1960]

Shipping contract — Uniform time charter — Interpretation of clause in — Ship detained by foreign power — Whether contract frustrated.

By the terms of a uniform time charter the defendant hired a ship from the plaintiff for a period of 3 months from September 4, 1960 at the rate of $7,600 per 30 days. During the second half of September the ship sailed to a port in Indonesia where it was detained by the Indonesian Government for the rest of the chartered period. Clause 26 of the time charter provided: "If for any reason whatsoever the vessel shall be detained at any port by any authority having dominion over that port the Charterers shall continue to pay the charter hire as provided for in this Agreement....." The plaintiff claimed the sum of $15,200 being the amount of hire due and the defendants pleaded frustration.

Held: on the true construction of the contract, Clause 26 was a provision which was intended to have effect in the circumstances which have arisen and full effect must be given to it, and therefore the contract was not frustrated.

Case referred to:—

(1) *Otto Banck* v. *Adam Bromley & Son* (1920), 5 Ll.L.R. 124.

ACTION.

K. S. Chung for the plaintiff.

M. Karthigesu for the defendants.

Cur. Adv. Vult.

Tan Ah Tah J.: In this action the plaintiff's claim is for the sum of $15,200 being the amount of hire alleged to be payable by the defendant company to the plaintiff under a uniform time charter dated the 8th September, 1960 and made between the plaintiff and the defendant company. By the terms of the uniform time charter the defendant company hired the vessel *Sri Seria* for a period of three calendar months from the 4th September, 1960 at the rate of $7,600 per 30 days payable in advance.

On the 13th September, 1960 the plaintiff's agent received from the defendant company the sum of $7,600 being the amount of hire from the 4th September, 1960 to the 3rd October, 1960. During the second half of September, 1960 the *Sri Seria* sailed on its first voyage under the uniform time charter to Tanjong Balai, Indonesia. On its arrival at this port, the vessel was detained by the Indonesian Government authorities and has been under detention ever since. There has been some speculation as to the reason for the detention of the vessel but no evidence which is properly admissible has been given on this point. Indeed, counsel for the defendant company has stated that he is not in a position to go into the reasons for the detention of the vessel.

In the defence and counterclaim filed by the defendant company a number of defences, including one based on frustration of contract, were raised and there was also a counterclaim for the refund of the sum of $7,600 already paid by the defendant company to the plaintiff and for the sum of $15,000 by way of general damages for loss of profit. However, soon after the commencement of the trial, counsel for the defendant company abandoned all the defences except the one based on frustration of contract and also abandoned the claim for damages which was contained in the counterclaim.

The relevant clauses of the uniform time charter are clauses 26, 28 and 31 which read as follows:

26. If for any reason whatsoever the vessel shall be detained at any port by any authority having dominion over that port the Charterers shall continue to pay the charter hire as provided for in this Agreement and will save harmless and keep indemnified the Owners from and against all action costs, charges claims and demands whatsoever arising out or in respect of such detention as aforesaid provided that if such detention shall arise out of the acts, neglect or default of the Owners their servants or agents then the Owners will in like manner indemnify the Charterers, their assigns. Should the vessel be confiscated by any Government by reason of the Charterers, their servants or agents having undertaken in illegal acts or trades, the Charterers shall then indemnify the Owners for the loss of the vessel, with the sum of Malayan Dollars one hundred and eighty thousand only (M$180,000).

28. In the event of any detention seizure or confiscation of the said vessel by the Indonesian Authorities or Government the Charterers shall not be liable for compensation or damages to the Owners and/or his agent provided always that such detention seizure or confiscation had not been brought about or caused by or through the default of the Charterers but if there had been such detention seizure or confiscation by reason of any acts deed or omission on the part of the Charterers then the Charterers shall be liable in damages and compensate the Owner for such detention, seizure or confiscation.

31. The Charterers shall be absolved free of all consequences, fines penalties and/or detention of the vessel arising from such action of the government appertaining to act or acts howsoever caused or committed by the owner, master and/or members of the crew prior to the charter hereof and the owner shall compensate the charterer by refunding to the charterer the charter hire for such unexpired period as may be incurred by the charterers.

Counsel for the defendant company submitted that on a proper construction of clause 26, the charterers were under a liability to continue to pay the hire only if the detention of the vessel was caused by some neglect or default on the part of the charterers. With regard to this submission, it is to be observed that there is no reference whatsoever in clause 26 to any question of neglect or default on the part of the charterers whereas it is clearly stated that if the detention shall arise out of the acts, neglect or default of the owners, their servants or agents, then the owners will indemnify the charterers against costs, charges and other matters set out in the clause. It is also to be observed that when the parties have in mind possible acts of default on the part of the charterers they are careful to mention them in the time charter. An example of this can be seen in clause 28. The omission from clause 26 of any mention of acts of default on the part of the charterers is therefore significant. In my opinion the submission of counsel for the defendant company on this point must fail.

As a defence based on frustration of contract has been raised, it is necessary to examine the express terms of the contract. The opening words of clause 26 are as follows:—

> 26. If for any reason whatsoever the vessel shall be detained at any port by any authority having dominion over that port the Charterers shall continue to pay the charter hire as provided for in this Agreement .....

These words could hardly be more comprehensive. The language is clear and unequivocal and capable of only one meaning. There is nothing ambiguous in the expressions used. The meaning of the words is perfectly clear and I do not think I can improve on them by attempting to paraphrase them. The rest of the words in clause 26 contains nothing which cuts down the extreme width of the opening words. It is plain that the situation which has arisen as a result of the detention of the *Sri Seria* at Tanjong Balai is expressly dealt with by clause 26. In this connection, it is relevant to refer to the case of *Otto Banck* v. *Adam Bromley & Son* [1] in which Bailhache J., dealing with the doctrine of frustration, said (at p. 126):

> "Frustration is an implication of law which is introduced of necessity, when the courts think so, into a contract, and never can be introduced when the contract deals with the precise state of affairs which it is alleged caused the frustration."

In the present case the precise state of affairs is dealt with by clause 26 and there is therefore no room for the application of the doctrine of frustration.

Section 3(3) of the Law Reform (Frustrated Contracts) Ordinance, 1959 (Ordinance No. 6 of 1959) provides as follows:

> 3(3). Where any contract to which this Ordinance applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to the foregoing section of this Ordinance to such extent, if any, as appears to the court to be consistent with the said provision.

In my opinion, clause 26 is a provision which, upon the true construction of the contract, is intended to have effect in the circumstances which have arisen in this case, and full effect should be given to it. There is no reason to give effect in any way to section 2 of the Ordinance.

For the reasons which I have stated, there must be judgment for the plaintiff for the sum of $15,200 with costs. The counterclaim is dismissed with costs.

Judgment for the plaintiff.

Solicitors: *Hilborne, Chung & Co.; Allen & Gledhill.*

ONG CHAN TOW v. REGINA

[A. Cr. J. (Winslow J.) February 20, 1963]

[Singapore — Magistrate's Appeal No. 148 of 1962]

Penal Code, s.304A — Rash and negligent act by omnibus driver — Sentence of fine — Appeal — Misdirection on weight to be attached to evidence of expert witness — "Causa causans" of accident — Inadequacy of sentence of fine.

Criminal Procedure — Sentence — Appeal — Inadequacy of sentence of fine in cases under Penal Code, s.304A.

Criminal evidence — Expert witness — Misdirection on weight to be attached to evidence of.

The appellant, an omnibus driver, was charged and convicted by the District Court under section 304A of the Penal Code and sentenced to a fine of $1,500 or 9 months' imprisonment in default and he was disqualified from driving for 3 years. The appellant appealed. It was *inter alia* contended for the appellant (i) that the learned District Judge erred in rejecting the evidence of the expert and (ii) that the District Judge misdirected himself in holding that the collision took place in the centre of the road and that the *causa causans* of the accident was the negligent act of the appellant.

Held: (1) in the circumstances of the case there was little light the expert could throw on the cause of this accident;

(2) it did not in this case matter whether the collision took place at the centre or on the wrong side of the road. The act of the appellant was the *causa causans* of the collision and he was solely responsible;

(3) the imposition of a fine, in the circumstances, was manifestly inadequate.

MAGISTRATE'S CRIMINAL APPEAL.

A. J. Braga for the appellant.

T. S. Sinnathuray (Deputy Public Prosecutor) for the respondent.

Winslow J.: The appellant was convicted on a charge of causing the death of one. Chuang Shu Yen, on the 16th May, 1962 by negligent driving in Jurong Road, an offence punishable under section 304A of the Penal Code and was sentenced to a fine of $1,500 or 9 months' imprisonment in default; he was also disqualified from driving for 3 years.